

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DANIEL E. CARPENTER,
Plaintiff,

V.

U.S. DEPARTMENT OF JUSTICE,
and U.S. ATTORNEY FOR THE
DISTRICT OF MASSACHUSETTS,
Defendants.

CIVIL ACTION
NO. 05-11012-MEL

GOVERNMENT'S L.R. 56.1 STATEMENT OF RELEVANT FACTS

In accordance with L.R. 56.1, and in support of its accompanying motion for summary judgment, the government submits this statement of relevant facts. Defendants incorporate herein the Declaration of John F. Bosker (“Boseker Decl.”) and attached Exhibits (“Boseker Exh.”).

A. Proceedings Related to Plaintiff's Criminal Indictment

1. A grand jury returned an indictment against Plaintiff on February 4, 2004. See United States v. Daniel E. Carpenter, Criminal Docket 04-10029-GAO, # 1 (“Crim. Docket”). On September 22, 2004, the grand jury returned a superseding indictment against Carpenter in light of a new case regarding sentencing guidelines. (Crim. Docket # 34).
2. After his motion to dismiss was denied on November 9, 2004 (Crim. Docket # 44), the Court granted Plaintiff a motion to continue the trial date that had been scheduled for trial on April 4, 2005. (Crim. Docket #55). On April 29, 2005, Plaintiff filed another emergency motion seeking a continuance until November

of 2005. (Crim. Docket # 59). The District Court denied this motion on May 4, 2005. (Crim. Docket # 63).

3. After being denied further motions to continue, Plaintiff filed a Motion for Transfer of Venue to the District of Connecticut on May 5, 2005. (Crim. Docket # 66). He also filed an alternative Motion to Transfer Venue to the Western Division of the District of Massachusetts. (Crim. Docket # 71). The District Court denied both of these motions on May 17, 2005. (Crim. Docket # 76).
4. On June 17, 2005, Plaintiff filed an "Emergency Motion for Production of Discovery" relating to the same documents he requested in his FOIA claim. (Crim. Docket # 80).

B. Plaintiff's FOIA Request

5. In a letter dated August 18, 2004, Richard S. Order, Esq., on behalf of Plaintiff, submitted a FOIA request by fax and mail for the following documents:
 - a. All documents, correspondence, records, or files provided by or obtained from John J. Koresko, V, Esq. that refer to, relate to, or reflect (a) Daniel E. Carpenter; (b) Benistar Property Exchange Trust Co., Inc.; (c) Benistar, Ltd.; (d) Benistar 419 Plan Services, Inc.; (e) Benistar 419 Plan; (f) Benistar Admin Services, Inc.; (g) the investigation leading to United States v. Carpenter, Criminal No. 04-10029-GAO; or (h) the case itself after the indictment issues.
 - b. All documents that refer to, relate to, or reflect any conversation with John J. Koresko, V, Esq.(Boseker Exhibit A).
6. On or around September 23, 2004, Mary Ellen Barrett, who is responsible for FOIA requests in the Massachusetts office, informed Plaintiff's counsel that the office could not release the records without the written authorization of Plaintiff.

(Plaintiff's Exhibit 2, Complaint ¶ 8; Answer ¶ 8).

7. In a letter dated September 23, 2004, Erin Boggs, Esq. submitted a notarized authorization from Plaintiff consenting to the release of the records requested.
(Plaintiff's Exhibit 2, Complaint ¶ 8; Answer ¶ 8).
8. In a letter dated October 13, 2005, Marie O'Rourke, Assistant Director in charge of FOIA requests at the DOJ, responded to Plaintiff's request for documents relating to Benistar Companies. It was assigned Request Number 04-3583. Ms. O'Rourke noted in her reply that "Project Requests", including requests for "all information about [requester] in criminal case files" may take much longer than usual requests. (Boseker Exhibit C).
9. In a letter dated October 15, 2003, Marie O'Rourke further communicated to Plaintiff's attorney that the requests for documents regarding Daniel Carpenter would not be released without his express and notarized authorization. (Boseker Exhibit B).
10. In a letter dated December 14, 2005, Marie O'Rourke responded to the request for documents relating to Daniel Carpenter. This request was reassigned Request Number 04-4511. (Boseker Exhibit E).
11. In a letter dated February 18, 2005, Marie O'Rourke sent an amended response to Plaintiff regarding all of the requests for documents. Ms. O'Rourke stated that all presently open files would be closed and all the requests would be re-filed under Request Number 05-388. Ms. O'Rourke stated that the EOUSA could "neither confirm or deny that such records exist" absent express consent from Mr.

Koresko. Furthermore, the letter stated that the records are “categorically exempt from disclosure pursuant to sections (b)(6) and (b)(7)(C)” of [FOIA]. (Boseker Exhibit F).

12. In a letter dated March 21, 2005, Plaintiff again identified Mr. Koresko as the subject of his FOIA request by stating “Mr. Carpenter has requested documents provided by or obtained from John J. Koresko, V that relate to Mr. Carpenter, a number of businesses with which he is affiliated, the investigation leading to United States v. Carpenter, Criminal No. 04-10029-GAO, or the criminal matter itself. Mr. Carpenter has also requested documents that reflect any conversations with Mr. Koresko.” (Boseker Exhibit G).

B. Filing of FOIA Complaint

12. Plaintiff originally filed his FOIA claim in the District of Connecticut on January 28, 2005. See Carpenter v. United States Dep’t of Justice, et al., Civil Docket 05-00172-AWT, # 1. (“FOIA Docket A”).
13. The government filed a Motion to Transfer the FOIA matter to the District of Massachusetts on March 11, 2005. (FOIA Docket A # 6). United States District Judge Alvin W. Thompson granted the governments motion on April 28, 2005 and the case was transferred to the District of Massachusetts. (FOIA Docket A # 10).
14. Plaintiff then filed a Motion to Transfer venue to the Western Division of the District of Massachusetts in Springfield on May 20, 2005. See Civil Docket 05-11012-MEL, #14 (“FOIA Docket B”). United States District Judge Morris

Lasker denied Plaintiff's Motion to Transfer on June 13, 2005. (FOIA Docket B # 17).

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

/s/Eugenia M. Carris
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Dated: July 1, 2005

CERTIFICATE OF MAILING

This is to certify that a true copy of the foregoing was electronically noticed or sent by first class mail on July 1, 2005, to plaintiff's counsel of record, Richard S. Order, Esq., Axinn, Veltrop & Harkrider LLP, 90 State House Square, Hartford, CT 06103, and Jack E. Robinson, Esq., 187 Atlantic Street, Stamford, CT 06902.

/s/Eugenia M. Carris
Eugenia M. Carris